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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE THOMAS J. WHELAN)

UNITED STATES OF AMERICA, Plaintiff, v. ARMANDO ARAMBURO-URIBE, Defendant.	Case No. 08CR1281-TJW DATE: September 24, 2007 TIME: 2:00 p.m. NOTICE OF MOTIONS AND MOTIONS TO: 1) DISMISS COUNT ONE OF THE INDICTMENT BECAUSE IT FAILS TO STATE AN OFFENSE AND IS DUPLICITOUS; AND 2) DISMISS COUNT TWO OF THE INDICTMENT BECAUSE IT FAILS TO STATE AN OFFENSE AND IS DUPLICITOUS; 3) DISMISS COUNTS ONE AND TWO BECAUSE, AS A MATTER OF LAW, THE GOVERNMENT CANNOT PROVE AN OFFENSE; AND 4) COMPEL A BILL OF PARTICULARS.

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY; AND
STEVEN DESALVO, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on September 3, 2008, at 9:00 a.m., or as soon thereafter as counsel may be heard, the defendant, Armando Aramburo-Uribe, by and through his attorneys, Elizabeth M. Barros, and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the motions listed below.

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MOTIONS

Armando Aramburo-Uribe, the defendant in this case, by and through her attorneys, Elizabeth M. Barros, and Federal Defenders of San Diego, Inc., pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law and local rules, hereby moves this Court for an order:

1) To Dismiss Count One of the Indictment Because It Fails to State an Offense and is Duplicitous;

2) Dismiss Count Two of the Indictment Because it Fails to State an Offense and Is Duplicitous;

3) Dismiss Counts One and Two Because, as a Matter of Law, the Government Cannot Prove an Offense; and

4) Compel a Bill of Particulars.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, and any and all other materials that may come to this Court's attention at the time of the hearing on these motions.

Respectfully submitted,

DATED: August 22, 2008

/s/ Elizabeth M. Barros
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE THOMAS J. WHELAN)

UNITED STATES OF AMERICA, Plaintiff, v. **ARMANDO ARAMBURO-URIBE**, Defendant.	)	Case No. 08CR1281-W DATE: September 3, 2008 TIME: 9:00 a.m. STATEMENT OF FACTS AND MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS

I.

STATEMENT OF FACTS[1]

On or about February 20, 2008, Armando Aramburo-Uribe ("Mr. Aramburo) was arrested after agents discovered he was transporting approximately $34,000 in currency and money orders. On or about April 23, 2008, Mr. Aramburo was indicted by the January 2007 Grand Jury with one count of failure to file reports on exporting money in violation of 31 U.S.C. §§ 5316(a)(1)(A), 5324(c)(1), and 31 C.F.R. § 103.23 and one count of bulk cash smuggling in violation of 31 U.S.C. § 5332(a).

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[1] The following statement of facts is based on materials received from the government. Mr. Aramburo does not accept this statement of facts as his own, and reserves the right to take a contrary position at motion hearings and trial. The facts alleged in these motions are subject to amplification and/or modification at the time these motions are heard.

Count One of the indictment charges:

> On or about February 20, 2008 within the Southern District of California, defendant ARMANDO ARAMBURO-URIBE, with intent to evade a currency reporting requirement of Title 31, United States Code, Section 5316, did transport and was about to transport more than $10,000 in monetary instruments, to wit, approximately $22,758.00 in U.S. currency and $12,000 in money orders, at one time from a place in the United States to or through a place outside the United States, to wit, the Republic of Mexico, without filing the report required by Title 31, United States Code, Section 5316; in violation of Title 31, United States Code, Sections 5316(a)(1)(A) and 5324(c)(1), and Title 31, Code of Federal Regulations, Section 103.23(a).

Count Two of the indictment charges:

> On or about February 20, 2008 within the Southern District of California, defendant ARMANDO ARAMBURO-URIBE, with intent to evade a currency reporting requirement of Title 31, United States Code, Section 5316, did knowingly conceal more than $10,000 in United States currency, to wit, approximately $22,758.00, concealed on his person, and transported, transferred or attempted to transport or transfer such currency from a place within the United States to a place outside of the United States, to wit, the Republic of Mexico, in violation of Title 31, United States Code, Section 5332(a).

II.

MOTION TO DISMISS COUNT ONE OF THE INDICTMENT BECAUSE IT FAILS TO STATE AN OFFENSE AND IS DUPLICITOUS

Count One of the indictment must be dismissed because: one, the government has failed to properly allege all elements of the offense(s); and two, it is duplicitous. Specifically, the government failed to allege the elements of 31 U.S.C. § 5316(a)(1)(A). Moreover, Count One charges two separate offenses; violations of section 5316 and section 5324.

A. Count One of the Indictment Must Be Dismissed Because the Government Failed to Allege All Elements of the Offense.

The Fifth Amendment requires that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . .." Consistent with this Constitutional requirement, the Supreme Court has held that an indictment must "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished." United States v. Carll, 105 U.S. 611, 612-13 (1881) (emphasis added). It is black letter law that an indictment that does not allege an element of an offense, even an implied element, is defective, and should be dismissed. See, e.g., Russell v. United States, 369 U.S. 749, 769-72 (1962); Stirone v. United States, 361 U.S. 212, 218-19 (1960); United States v. Du Bo, 186 F.3d 1177, 1179 (9th Cir. 1999); United States v. Keith, 605 F.2d 462, 464 (9th Cir. 1979).

1. The Elements of 31 U.S.C. § 5316(a)(1)(A).

Section 5316 has the following elements:

> First, the defendant knowingly [transported] [received] more than $10,000 in [*e.g.*, currency] [from a place in the United States to or through a place outside the United States] [to a place in the United States from or through a place outside the United States];
>
> Second, the defendant knew that a report of the amount transported was required to be filed with the Secretary of Treasury; and
>
> Third, the defendant willfully failed to file such report at the time and place the Secretary of the Treasury prescribed, to wit: the defendant failed to file a report with the Customs officer in charge at the port of entry or departure at the time of defendant's departure from the United States.

See Ninth Circuit Model Jury Instruction 9.41 (modified); 31 U.S.C. § 5316 ("A report under this section shall be filed at the time and place the Secretary of the Treasury prescribes"); 31 C.F.R. § 103.27(b)(1) ("A report required by § 103.23(a) shall be filed at the time of entry into the United State or at the time of departure. . ."); 31 C.F.R. § 103.27(b)(3) ("All reports required by § 103.23 shall be filed with the Customs officer in charge at any port of entry or departure"). See also United States v. Jenkins, 689 F.Supp. 342 (S.D.N.Y 1988) ("The offense of transporting currency or monetary instruments without filing the necessary reports is only triggered once the duty to file the report has been created."). Furthermore, to act "willfully," the defendant must have both knowledge of the reporting requirement and purpose to disobey the law. United States v. Tatoyan, 474 F.3d 1171 (9th Cir. 2007) (citing Ratzlaf v. United States, 510 U.S. 135, 141 (1994)).

2. The Government Failed to Allege That Mr. Aramburo Knew That a Report Was Required, and That He Willfully Failed to File Such a Report.

Count One of the indictment charges:

> On or about February 20, 2008 within the Southern District of California, defendant ARMANDO ARAMBURO-URIBE, with intent to evade a currency reporting requirement of Title 31, United States Code, Section 5316, did transport and was about to transport more than $10,000 in monetary instruments, to wit, approximately $22,758.00 in United States currency and $12,000 in money orders, at one time from a place in the United States to or through a place outside the United States, to wit, the

> Republic of Mexico, without filing the report required by Title 31, United States Code, Section 5316; in violation of Title 31, United States Code, Sections 5316(a)(1)(A) and 5324(c)(1), and Title 31, Code of Federal Regulations, Section 103.23(a).

As is clear from above, Count One fails to allege either that Mr. Aramburo knew that a report of the amount transported was required to be filed with the Secretary of Treasury or that Mr. Aramburo willfully failed to file such a report. Therefore, Count One must be dismissed because it fails to allege all of the elements of the offense.

3. The Government Failed to Allege That Mr. Aramburo Failed to File a Report at the Time and Place the Secretary of the Treasury Prescribed, to Wit: at the Time of Mr. Aramburo's Departure with the Customs Officer in Charge at the Port of Entry or Departure.

In Jenkins, 689 F.Supp. at 342, the defendant moved to dismiss the indictment for failure to charge a crime. The district court granted the defendant's motions. Id. As the district court noted, the Secretary of Treasury has published regulations prescribing the time and place for the filing of a report required by § 5316. Id. 342-343. Those regulations are now located at 31 C.F.R. § 103.27 and prescribe that "the required report shall be filed 'at the time of departure' from the United States with the Customs officer in charge at any port of departure." Id.; 31 C.F.R. § 103.27(b).

As the court in Jenkins explained, "[t]he offense of transporting currency or monetary instruments without filing the necessary reports is only triggered once the duty to report has been created." Id. (citing H.R.Rep. No. 99-855, 99th Cong., 2d Sess., pt. 1, at 19 (1986). Although the 1986 amendment to the statute "would permit the Secretary to specify event in advance of departure which would trigger the duty to file the report," id., "it is crystal clear both from the language of the statute and from the legislative history that. . .the Secretary of Treasury has not done so." Id. at 344. Thus, the district court found that the defendant could not have committed "the only offense defined by section 5316-failure to file the required report-because he had no duty to do so before the time of his departure."

As the Jenkins case establishes, one of the elements of an offense under § 5316 is that the defendant failed to file the report (to the Customs officer in charge) at the time of his departure. The government failed to allege this element, therefore, Count One of the instant indictment must be dismissed.

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B. The Court Should Also Dismiss Count One Because It Is Duplicitous.

Count One should also be dismissed because it is duplicitous. Federal Rule of Criminal Procedure 8(a) prohibits charging two or more offenses in the same count of an indictment. "Duplicity is the joining of two or more distinct offenses in a single count, so that the general verdict does not reveal exactly which crimes the jury found the defendant committed." United States v. Gomberg, 715 F.2d 843, 845 (93d Cir. 1983). Combining offenses in one count creates several problems:

> (1) The jury in a general verdict cannot make a finding on each offense; (2) A defendant may not have proper notice of the charges against him; (3) It may be difficult if not impossible to make correct evidentiary rulings; (4) A jury may convict a defendant without unanimously agreeing on the same offense; (5) A defendant may be prejudiced in a subsequent double jeopardy defense; (6) A defendant may be prejudiced at sentencing; and (7) A defendant may face limited review on appeal.

United States v. Gray, 101 F. Supp. 2d 580, 583 (E.D. Tenn. 2000); see also United States v. Aguilar, 756 F.2d 1418, 1420 n.2 (9th Cir. 1985); United States v. UCO Oil Co., 546 F.2d 833, 835 (9th Cir. 1976).

In this case, Count One is duplicitous because it alleges violations of Sections 5316 and 5324. As is clear from the Ninth Circuit's holding in United States v. Ramirez-Martinez, 273 F.3d 903, 913 (9th Cir. 2001), overruled on other grounds by United States v. Lopez, 484 F.3d. 1186 (9th Cir. 2007), the test to determine whether an indictment is duplicitous is to assess whether it charges offenses with different elements. "An indictment is duplicitous where a single count joins two or more distinct and separate offenses." Id.

1. Count One is Duplicitous Because it Charges that Mr. Aramburo "Did Transport and Was About to Transport"

Section 5316(a)(1) requires a person to file a report when the person knowingly transports, is about to transport, *or* has transported, monetary instruments of more than $10,000 at one time. The statute creates three separate offenses. The government's charging error fails to provide Mr. Aramburo with notice as to whether he is being charged with having transported or being "about to transport" monetary instruments from the United States to Mexico. It also creates the risk that the jury may convict him without unanimously agreeing on the same offense and may prejudice him in a subsequent double jeopardy offense. Therefore, the indictment is duplicitous.

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2. Count One is Duplicitous Because it Charges a Violation of Both 31 U.S.C. § 5316 and § 5324.

Section 5316(a)(1)(A) provides: "Except as provided in subsection (c) of this section, a person or an agent or bailee of the person shall file a report under subsection (b) of this section when the person, agent, or bailee knowingly--transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time--from a place in the United States to or through a place outside the United States." Whereas, section 5324(c)(1) provides: "No person shall, for the purposes of evading the reporting requirements of section 5316--fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report." Thus, the elements of these two offenses are different[2]. Accordingly, because Count One charges more than one offense, it is duplicitous, and this Court should dismiss the count.

III.

MOTION TO DISMISS COUNT TWO OF THE INDICTMENT BECAUSE IT FAILS TO STATE AN OFFENSE AND IS DUPLICITOUS

A. Count Two Fails to Allege an Element

Count Two of the indictment suffers from the same flaws as Count One, the government failed to properly allege all the elements of the offense.

As for Count Two, the government alleges as follows:

> On or about February 20, 2008 within the Southern District of California, defendant ARMANDO ARAMBURO-URIBE, with intent to evade a currency reporting requirement of Title 31, United States Code, Section 5316, did knowingly conceal more than $10,000 in United States currency, to wit, approximately $22,758.00, concealed on his person, and transported, transferred or attempted to transport or transfer such currency from a place within the United States to a place outside of the United States, to wit, the Republic of Mexico, in violation of Title 31, United States Code, Section 5332(a).

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[2] For example, under section 5324(c)(1), the failure to report must be "for the purpose of evading the reporting requirements of section 5316." This makes sense because the title of section 5324 is "Structuring transactions to evade reporting requirement prohibited." See Trainmen v. Baltimore & Ohio R. Co., 331 U.S. 519, 528-529 (1947) (finding that the title of a statute can be looked to for interpreting an ambiguous word or phrase.)

Section 5332(a) provides, in relevant part:

> Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

Thus, a violation of section 5332(a) is premised on a violation of section 5316.

As is noted above, in order to violate the reporting requirements of section 5316, the person must know that a report of the amount transported was required to be filed with the Secretary of Treasury; and willfully fail to file such report. In this case, the government failed to properly allege this *mens rea* element and, therefore, Count Two must be dismissed because it fails to allege all of the elements of this offense. See, e.g., Russell, 369 U.S. at 769-72; Stirone, 361 U.S. at 218-19; Du Bo, 186 F.3d at 1179; Keith, 605 F.2d at 464.

B. Count Two is Duplicitous

Count Two charges multiple offenses. Specifically, it charges that Mr. Aramburo transport, transferred or attempted to transport or transfer" currency from within the United States to a place outside the United States. As the Ninth Circuit observed in Ramirez-Martinez, 273 F.3d 903, 913-915, an attempt to transport and an actual transport are different crimes which have different elements. Thus, an indictment which charges both a transport and an attempt, as the instant indictment does, is duplicitous.

IV.

THE COURT SHOULD DISMISS COUNTS ONE AND TWO BECAUSE, AS A MATTER OF LAW, THE GOVERNMENT CANNOT MAKE ITS CASE

Finally, the Court should dismiss the substantive counts of the indictment because the government cannot make its case as a matter of law. Mr. Aramburo first sets out the Court's authority for entering such rulings.

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A. Legal Authority To Dismiss.

In United States v. Phillips, 367 F.3d 846, 855 (9th Cir. 2004), the court noted that it can rule on a motion to dismiss the indictment if based on "a pure issue of law," and the factual basis therefore is undisputed. In the motion to dismiss below, Mr. Aramburo is willing to accept, for the sake of these motions, the facts that the government asserts it will prove at trial. But even giving the government the full benefit of the doubt in this regard, it cannot make its case with respect to the substantive counts. Accordingly, the Court should dismiss all counts.

B. The Court Should Dismiss Counts One and Two, Because Even Accepting The Government's Allegations, There Is No Way It Can Make Its Case On Those Counts.

Mr. Aramburo moves to dismiss the substantive counts lodged against him because even if the government was successful in proving at trial that Mr. Aramburo had knowledge of the monetary instruments, as well as knowledge of the reporting requirements, and acted with the purpose to disobey the law, the government cannot prove that Mr. Aramburo failed to report the monetary instruments at the time of his departure, which is the time prescribed by the Secretary of Treasury. 31 U.S.C. § 5316; 31 C.F.R. § 103.27. The government cannot prove this because as a matter of law, the reporting requirement of 31 U.S.C. § 5316 had not yet been triggered at the time Mr. Aramburo was stopped by border patrol agents.

1. The reporting requirement of 31 U.S.C. § 5316 is triggered at the time of departure from the United States.

Title 31 U.S.C. section 5316(b) provides: "A report under this section shall be filed at a time and place the Secretary of the Treasury prescribes." The relevant regulation interpreting this section provides that the point of filing the report is "the time of departure from the United States." 31 C.F.R. § 103.27.

2. Mr. Aramburo was not stopped by border patrol agents at the *time of his departure* from the United States thus, the reporting requirement of section 5136 had not been triggered.

Mr. Aramburo was stopped by border patrol agents as he was walking north, away from the border. Moreover, even at his the farthest point south (toward Mexico) Mr. Aramburo had not progressed far enough toward departure from the United States to violate section 5316. "The law is not violated until the person is on the verge of boarding the plane or other mode of transportation at the final call for departure." Jenkins, 689 F.Supp. at 343. This means, "customs agents must, regardless of the exigencies and inconvenience of the developing situation, standby helpless until virtually the last moment of departure before apprehending the suspect." Id.

________Even the 1984 amendment to the statute which inserting the words "attempted to transport"was done only to make plain that once a defendant "passed the Customs desk at the place of departure and had not filed the required report, he had committed the conduct proscribed by section 5316." Id. However, Congress again modified the statute in 1986, changing the statute to authorize but not require the Secretary of Treasury to create criminal liability once a person passed the Customs desk but before reaching the final call for departure. See id. However, the Secretary of Treasury has not done so.

Similarly, in a decision affirmed by the Ninth Circuit, the district court of the Northern District of California held that, "'time of departure' from the country is reached when one is reasonably close, both spatially and temporally, to the physical point of departure itself, and manifests a definite commitment to leave." United States v. $831,160.45 U.S. Currency, 607 F.Supp. 1407 (N.D.Cal.1985), aff'd mem., 785 F.2d 317 (9th Cir.1986). Here, Mr. Aramburo did not manifest a definite commitment to leave. He did not check luggage, he did purchase a ticket, hand in a boarding pass, or make it through any lines (either a security line or a line at the jetway). Furthermore, he never made it to agent asking the people leaving whether they had monetary instruments to declare. To the contrary, it is undisputed that he had turned around and was heading north at the time he was stopped by the agent. He did not manifest a definite, unequivocal commitment to leave the United States.

The cases finding that a person manifested the requisite definite commitment to leave involve clear and unequivocal steps toward departure. For example, in United States v. $122,042.00 in United States Currency, 792 F.2d 1470 (9th Cir.1986), a civil forfeiture case, Ms. Meixer arrived at the Los Angeles International Airport, checked her luggage and headed for the departure area. Id. at 1471. Ten minutes before the flight was to board, a customs official made an announcement over the public sound system advising passengers of the currency reporting requirements. Id. at 1472. Ms. Meixner passed through the security checkpoint at the departure level, handed a portion of her boarding pass to an airline employee, and entered the jetway. Id. After entering the jetway, the she was specifically asked by a customs official if she was taking more than $5,000 out of the country. Id. at 1472. She was then told of the reporting requirement and again asked if she was taking more than $5,000 out of the country. Id. She again said and proceeded toward the entrance of her plane where two more customs officials questioned her about the currency she was carrying. Id. The defendant was eventually discovered to have over a hundred thousand dollars on her person and her luggage. Id. at 1473. The district court found that the defendant's duty in this case to file attached at the time of the first stop on the jetway. Id. In affirming the district court's decision, the Ninth Circuit held that "Meixner unequivocally manifested an intention to leave the United States in violation of the currency reporting requirement when she entered the jetway after stating that she was carrying less than $5,000 in United States Currency." Id. at 1475. The court noted that "Meixner manifested the clear intention of covertly transporting the defendant currency out of the United States. She checked her baggage, passed through security and presented her boarding pass. At the time she was finally apprehended she stood at the end of the jetway next to the entrance of the international flight she was scheduled to board." Id. at 1477.

Other circuit courts have also adopted similar definitions as to that of the Ninth Circuit. In United States v. Rojas, customs officers at Miami International Airport made an announcement describing the reporting requirement over a public address system. United States v. Rojas, 671 F.2d 159 (5th Cir.1982). The defendant in that case was stopped by a customs officer with reporting forms in hand. This officer asked the defendant whether she was carrying currency over $5,000 to which the defendant replied that she was not. Id. at 161. The defendant's flight was then called for boarding. The defendant handed her boarding pass to the airline employee and began walking down the jetway when two customs officers stopped her, examined her belongings and discovered over a million and a half dollars. Id. at 161-162. The Fifth Circuit in that case held,

> We conclude that after the flight had been called for boarding and appellant had stepped onto the jetport preparing to board the plane, the critical "time of departure" had been reached. At this point, appellant had unequivocally manifested an intention to leave the United States, and although stepping on the jetport is not the latest temporal point which could be interpreted as the "time of departure," fixing this critical point at a later time would create a myriad of practical problems for enforcing the law and thus run counter to Congressional intent.

Id. at 163.

It is clear that applying the standard developed by the courts above to the instant case, at the time of Mr. Aramburo's stop he was under no duty to report the currency/ monetary instruments because he did not manifest the definite, unequivocal intention to leave the United States, thus, the substantive counts of the indictment must be dismissed because as a matter of law. The facts of the instant case are significantly different from the facts of the cases discussed above which held that the defendants there had satisfied the "time of departure" requirements. Here, Mr. Aramburo was heading north, away from the border. Even if this Court accepts the agent's testimony that Mr. Aramburo earlier stepped into a line that had formed in Friendship Plaza, merely getting into line is not sufficient to demonstrate the definite, unequivocal commitment to leave the country that is required under the statute. See e.g., Tatoyan, 474 F.3d at 1182, n. 10 ("For example, a person who knowingly conceals $20,000 in his briefcase with the intent to evade the currency reporting requirements, but then 'breaks down' at the airport and reports the full $20,000 on Form 4790, is . . . not guilty of a failure to report."). This is particularly true, where, as here, the line was north of Customs desk and north of the pedestrian overpass that a person would use to go to the port offices on the other side of the freeway to obtain the necessary form.

As the government cannot, as a matter of law, show that Mr. Aramburo had demonstrated the requisite clear and unequivocal intent to leave at the time he was stopped, the substantive counts of the indictment against Mr. Aramburo must be dismissed.

V.

MOTION TO COMPEL THE GOVERNMENT TO PROVIDE A BILL OF PARTICULARS

If this Court denies Mr. Aramburo's above motions to dismiss the indictment, then he hereby moves this Court to direct the government to file a bill of particulars. See Fed.R.Crim.P. 7(f). The bill of particulars requires the government to particularize the matters charged in the indictment, thus elucidating the theory of its prosecution. Yeargain v. United States, 314 F.2d 881, 882 (9th Cir. 1963).

Indeed, a bill of particulars will be ordered whenever it appears necessary to enable the defendant to meet the charge against him or to avoid danger of injustice. United States v. Allied Chemical & Dye Corp., 42 F. Supp. 425, 428 (S.D.N.Y. 1941) (citing Coffin v. United States, 156 U.S. 432, 452 (1895)). This is true even where the indictment states all the ingredients of the offense. Myers v. United States, 15 F.2d 977, 983 (8th Cir. 1926) ("The office of a bill of particulars attaches without distinction, where the indictment states all the ingredients of the offense and further detail may be required or demanded for the protection of the defendant"). See also United States v. Thompson, 189 F. 838, 839 (W.D.Va. 1911) ("An indictment may be so expressed as to be good on demurrer and which still does not give the defendant all the information which

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he should in fairness have in order to properly prepare for trial, and in such case the defects in the indictment, in Federal practice, may be overcome by a bill of particulars").

In this case, a bill of particulars is warranted because the government has failed to allege all of the elements of the offenses and has charged multiple offenses in both Counts One and Two. If this Court does not dismiss Counts One and Two of the Indictment, then Mr. Aramburo will not be able to adequately prepare for a defense or otherwise respond to the government's allegations. Therefore, a bill of particulars is warranted in this case.

VI.

CONCLUSION

For the reasons stated above, Mr. Aramburo moves this Court to grant his motions.

Respectfully submitted,

DATED: August 22, 2008

/s/ Elizabeth M. Barros
ELIZABETH M. BARROS
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Aramburo

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Attorneys for Armando Aramburo-Uribe

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE THOMAS J. WHELAN)

UNITED STATES OF AMERICA, Plaintiff, v. ARMANDO ARAMBURO-URIBE, Defendant.	Case No. 08CR1281-W **CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that a copy of the foregoing document has been served this day upon:

U.S. Attorney CR
Efile.dkt.gc2@usdoj.gov

Respectfully submitted,

DATED: August 22, 2008

/s/ Elizabeth M. Barros
ELIZABETH M. BARROS
Federal Defenders of San Diego, Inc.
Attorneys for Armando Aramburo-Uribe